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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/560,203	04/28/2000	Terry Erisman	TEE 2000-1	3365
23694 7590 05/04/2009 J. NICHOLAS GROSS, ATTORNEY 2030 ADDISON ST. SUITE 610 BERKELEY, CA 94704				
EXAMINER FELTEN, DANIEL S				
ART UNIT		PAPER NUMBER		
3696				
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05/04/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* TERRY ERISMAN

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Application 09/560,203  
Technology Center 3600

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Mailed: May 4, 2009

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*Before* HARRY HORTON, *Paralegal Specialist*.  
HORTON, *Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on April 30, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

### AMENDMENT AFTER FINAL

A review of the file indicates that on November 13, 2006, Appellant filed an Amendment After-Final in response to the Final Rejection mailed September 11, 2006. It is not clear whether this Amendment has been considered because box 11 of an Advisory Action mailed December 19, 2006 fails to indicate whether or not the proposed Response to the Final Rejection will or will not be entered for purposes of appeal. Clarification from the Examiner is required.

### PRIOR ORDER FOR RETURN

A prior "Order Returning Undocketed Appeal to Examiner" was mailed on December 3, 2008 wherein the Examiner was instructed that corrections were required. A review of the file finds that the required corrections have not been made. The matters still requiring attention prior to docketing are identified below.

### APPEAL BRIEF, STATUS OF CLAIMS

A review of the file finds that the status of the claims as provided in the Appeal Brief filed October 3, 2007 under the heading "STATUS OF CLAIMS" is unclear and/or is not consistent with the status of claims of record in accordance with 37 C.F.R. § 41.37(c)(1)(iii) (2008). The status of the claims as provided in the Appeal Brief must be consistent with the last *entered* amendment. Each claim on appeal must be identified. *See also the Manual of Patent Examining Procedure* (MPEP) § 1205.02 (8<sup>th</sup> ed. Rev. 7, July 2008) for details.

A review of the last entered amendment finds that claims 1-10, 37-70, 76-81, 85-87, and 94-102 are rejected under 35 U.S.C. § 103(a); whereas Appellant has not indicated the status of these claims as rejected, but as

“pending.” Appellant did not list canceled claims 11-36, 71-75, 82-84, and 88-93. Correction of the status of *all* claims is required.

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CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) to hold the Appeal Brief filed on October 3, 2007 defective;
- 2) to notify Appellant to file a paper properly addressing the status of all claims;
- 3) to appropriately respond to the Amendment After-Final by issuing a corrected Advisory Action which has box 11 properly checked; and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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